United Nations S/2003/261

Security Council

Distr.: General
7 March 2003

Original: English

Letter dated 3 March 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 22 November 2002 (S/2002/1286).

The Counter-Terrorism Committee has received the attached third report from the Czech Republic submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

03-27305 (E) 140303

Annex

Letter dated 17 February 2003 from the Permanent Representative of the Czech Republic to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

In reply to your letter from 15 November 2002 I would like to submit the "Reaction of the Czech Republic to the second set of supplementary questions of CTC". Being aware of the importance and urgence that a comprehensive issue such as fight against terrorism represents I would like to draw your attention to a few comments to the "Reaction of the Czech Republic to the second set of supplementary questions of CTC".

The Czech Republic welcomed the enhanced cooperation with CTC and has been carefully following the outcome of its work. The Czech Republic has been also thoroughly monitoring and analysing all the recommendation and initiatives CTC had provided in respect to the implementation of resolution 1373 (2001).

The Czech Republic is currently in the process of principally amending one of the main acts — Criminal Code. I would like to assure you the Czech Republic has carefully considered its international commitments as well as the suggestions and recommendations of the European Union and CTC during the drafting process. The draft Act is due to be submitted to the Government on 30 June 2003 therefore at the moment the Czech Republic was unable to competently respond to all the relevant questions of CTC. As the complexity of the issue is evident, the Czech Republic is expecting to provide CTC with an addendum to the current "Reaction of the Czech Republic to the second set of supplementary questions of CTC" in the time period following the government approval of the amendment of the Criminal Code.

(*Signed*) Hynek **Kmoníček**
Ambassador
Permanent Representative

Enclosure

Reaction of the Czech Republic to the second set of supplementary questions of CTC

1.2. Is the intention of the Czech Republic to directly criminalise all the acts specified in sub-paragraphs 1 (b) and (d)?

Preparations for re-enactment of the Criminal Code are currently under way. The Ministry of Justice, in consultation with other ministries represented on the interministerial working commission, are working on an articulated bill that should be presented to the Government for approval on 30 June 2003. Since the text is in the stage of working drafts, no authoritative information can be provided on the criminalization of these acts.

For operative criminal legislation covering the acts, see Annex 1.

1.3. The CTC would appreciate receiving an outline of the proposed amendments to the provisions relating to freezing of funds. Will the amendments provide authority to freeze all funds, financial assets and connected with terrorism, regardless of whether the funds are actually used for a terrorist act?

If the expression "person connected with terrorism" means a person whose connection with terrorism is based on a particular crime included in the Criminal Code, the freezing of funds and assets is possible even if they have not yet been actually used for terrorist purposes. The task of the Czech Republic Police is to detect and temporarily take control of such funds pending a court order on their further disposal.

The anticipated amendment to Act No. 61/1996 (expected to enter into force in June 2003) will broaden the powers of the Financial Analysis Department at the Czech Ministry of Finance ("FAD", created by Act No. 61/1996 to combat the laundering of proceeds of crime) to include the fight against terrorism. In addition to their duty to report suspected money laundering transactions, banks and similar institutions will be newly required to report to the FAD any suspicious transactions potentially connected with the financing of terrorism. The operative legislation allows the FAD to suspend the client's draft (in effect to freeze the transferred funds) for a period not exceeding 72 hours. Within this period the FAD examines the transaction and decides whether there are grounds for reporting a crime. Action is thus taken promptly, without undue delay. If the results of the examination are positive, the period is extended by three days during which the law enforcement authorities assume control of the funds. If no crime is reported, the funds are unblocked upon the expiry of the initial 72-hour period.

For particulars on the legislation concerning the freezing of funds, see Annex 2.

1.4. The CTC would be grateful for an outline and explanation of the provisions of Act No. 61/1988 Col. That prevent the diversion of explosives to purposes other than those prescribed by law and, in particular, to terrorist groups.

Section 22 of Act No. 61/1988 on mining activities, explosives and the state administration of the mining industry, lays down general obligations concerning the

management of explosives. These standard legislative measures provide, in particular, that every business entity engaged in mining activities has the no-fault liability for securing explosives against theft, in order to prevent their use in terrorist attacks.

The business entity must report on measures taken to secure the explosives to the Czech Mining Authority and to the territorial department of the Czech Republic Police.

It is worth noting that the crime of "unauthorized possession of weapons" under Section 183, para 2 of the Criminal Code includes also unauthorized possession of explosives. In this case the term "explosive" covers substances and devices defined in Section 21, para 1 of Act No. 61/1988 on mining activities, explosives and state administration of the mining industry.

1.5. Effective implementation of sub-paragraphs 2 (d) and (e) of the Resolution requires a State to criminalise the use of its territory for the purpose of committing terrorist acts against other States or their citizens or for the purpose of financing, planning and facilitating of terrorist acts against other States or their citizens, even though no related terrorist acts have actually been committed or attempted. The current provisions in Czech law as explained in the reports do not seem to adequately meet this requirement. Will the new Criminal Code deal comprehensively with this issue?

Preparation of crimes is established as a criminal offence, including preparation of crimes committed against another State or planned to be committed in its territory. The Criminal Code contains sanctions against organizing, aiding and abetting the commission of crimes, including the provision of means (Section 10 of the Criminal Code), against participation in a conspiracy, including support for a conspiracy (Section 163 of the Criminal Code), incitement to crimes (Section 164 of the Criminal Code), etc. Attempts or even preparation to commit crimes are also established as a criminal offence.

1.6. Paragraph 3 calls upon Member States to become parties as soon as possible to all 12 international conventions and protocols relating to terrorism. The CTC would therefore welcome a report on the outcome of the evaluation concerning the Czech Republic becoming a party to the two conventions to which it is yet to become a party.

The Czech Republic's possible accession to the Convention for the Suppression of Illegal Acts against the Safety of Marine Navigation and the Protocol for the Suppression of Illegal Acts against the Safety of Fixed Platforms Located on the Continental Shelf has been thoroughly considered with respect to the recommendation and suggestions of the CTC. Implementation of the two instruments will require certain changes to the Criminal Code. These changes are part of the re-enactment package and will probably be reflected in the new clauses establishing the criminal liability of legal persons.

Annex 1

Re paragraph 1.2

It is important to note that terrorist acts can be prosecuted in the Czech Republic on the basis of the criminal offences already established in the operative criminal legislation. These offences include terror (Section 93 - intentional killing, or attempt to kill, with the aim to undermine the constituted governmental authority, Section 93a of the Criminal Code - taking hostages with the aim to compel others to fulfil demands that undermine the constituted governmental authority), sabotage (Sections 95 and 96 of the Criminal Code), jeopardizing the security of aircraft and non-military vessels (Section 18 of the Criminal Code), murder (Section 219 of the Criminal Code), taking hostages (Section 234a of the Criminal Code), etc.

The classification would depend on the circumstances and facts of the case, especially on the intentions of the perpetrators and those who e.g. provided or collected funds with the knowledge that the funds will be or would be used for terrorist purposes. In this case the offender may be charged with "participation in an offence by organizing, counselling or aiding and abetting" (Section 10 of the Criminal Code), preparation of a crime (Section 7 of the Criminal Code) or, if he acted in closer association with the principal perpetrators, with complicity (Section 9, para 2 of the Criminal Code).

The act of attempting, participating in or preparing for any crime covered by the Criminal Code is established as a criminal offence.

It is important that perpetrators and their accomplices are equally liable for punishment and that attempted crimes and, in principle, preparation for a crime carry the same sanctions as completed crimes.

Membership in an organized criminal group (Section 34g of the Criminal Code) is an especially aggravating factor in all cases, including completed, prepared or attempted crimes and participation in a crime.

The provisions on criminal conspiracy as defined in Section 89, para 17 of the Criminal Code are applied if there is a provable connection between the source of funds and a terrorist group. The participants covered by Section 163 of the Criminal Code are charged with "crimes committed for the benefit of a criminal conspiracy", subject to the conditions laid down in Sections 43 and 44 of the Criminal Code.

The act of legalizing the proceeds of organized crime was established as a criminal offence by Act No. 143/2002 amending the Criminal Code, effective from 1 July 2002 (Section 252, para a). The provision is specifically directed against money laundering as an activity closely connected with organized crime and terrorism.

Collection of money to reward or support perpetrators of terrorist attacks constitutes the crime of "advocating criminal activities" under Section 165, para 2 of the Criminal Code, as long as the act of collecting money is clearly separate from the terrorist act. A collection directly connected with a terrorist act would constitute participation in or preparation of a crime or complicity under the provisions mentioned above.

Annex 2

Legislation regulating the freezing of funds

The freezing of funds on the basis of international commitments is regulated by Act No. 48/2000 on measures concerning the Afghan Taliban movement and Act No. 98/2000 on the implementation of international sanctions for the purposes of preserving international peace and security. The freezing of funds can be ordered either in the course of the criminal procedure or as a separate measure (see 1.3. above).

The freezing of funds in the course of the criminal procedure is regulated by Sections 79a, 79b and 79c of the Code of Criminal Procedure. If there are reasonable grounds for believing that funds deposited in a bank account are intended to be used or have been used for criminal purposes, or that they are proceeds of crime, the presiding judge or the prosecuting attorney (in pre-trial proceedings) may take control of them. Section 79 of the Code of Criminal Procedure provides that the legal grounds for freezing bank accounts apply also to accounts kept by savings banks, credit cooperatives or similar institutions, state-subsidized pension insurance accounts, credits or income from leases. The procedures for ordering, terminating and limiting the measure are set forth in Section 79a. The freezing of book-entry securities is regulated by Section 79c of the Code of Criminal Procedure: if the presiding judge or the prosecuting attorney (in pre-trial proceedings) orders the freezing of book-entry securities, the Securities Centre, the legal entity authorized by a special law to keep part of the records and to perform other functions of the Securities Centre, or the Czech National Bank shall open for the owner a special account where the securities are deposited. In urgent cases the freezing of book-entry securities may be ordered by the police. However, the police order must be communicated within 48 hours to the prosecuting attorney who may either approve or cancel it. Any transactions involving these securities are forbidden with effect from the delivery of the order.